

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EG06SE-64124 & EG06SE-64381  
EEOC CHARGE NO. 17E-2014-00203

Thelma Robinson,

Complainant,

v.

East Orange Board of Education

Respondent.

Administrative Action

**FINDING OF PROBABLE CAUSE**

On November 9, 2011, East Orange resident Thelma Robinson (Complainant) filed complaints with the Equal Employment Opportunity Commission (EEOC) and the New Jersey Division on Civil Rights (DCR), alleging that she was subjected to harassment on the basis of her gender while working in schools operated by the East Orange Board of Education (Respondent or the District). Under a work-sharing agreement between the EEOC and DCR, the complaints were initially investigated by the EEOC. On or about December 20, 2011, the EEOC declined to take further action on her complaint and issued a right to sue letter. Complainant asked DCR to review the EEOC's investigation.

On February 26, 2014, Complainant filed a second complaint with DCR and the EEOC, alleging that Respondent retaliated against her for filing her initial complaints and asking DCR to review her case. Respondent denied the allegations of sexual harassment and retaliation in their entirety. DCR's ensuing investigation found as follows.

**Summary of the Investigation**

**a. Background**

In 2009, Complainant began working for one of Respondent's vendors, Sodexo, as a cafeteria worker. Her supervisors were Sodexo managers Yolanda Shivers and Francine Sosa. Complainant told DCR that in May 2010, while working in the Patrick Healy School, she addressed the school principal, Dr. Robert Morgan, as "Mr. Morgan," and that he replied, "It's Dr. Morgan to you, bitch." Complainant said she reported the incident to Sosa and Shivers who replied, "Don't take it personal," and told her that Morgan had already called them to report her for being insubordinate.

On May 26, 2010, Morgan wrote a memo to Shivers outlining what he deemed to be Complainant's unprofessional behavior during the school year. He wrote that Complainant allowed family members to visit her at work, allowed students to linger around her cash register, and once responded in an unprofessional tone after he directed the students to line up for lunch on Complainant's side of the station. He also set forth his version of the cafeteria incident in which Complainant alleges that he called her "bitch." He told Sodexo that rather than discuss

an issue with him, Complainant addressed an assistant principal who was sitting at the table with him. He considered that to be unprofessional.<sup>1</sup>

On May 27, 2010, Shivers issued a written coaching to Complainant, which among other things, directed her to address the person in charge of the building "by the correct title and the correct usage of words." At Morgan's request, Sodexo reassigned Complainant to another school.

**b. Complainant Begins Working Directly for Respondent**

In March 2011, Complainant applied to work for Respondent as a custodian. She was interviewed by Candace Wildy (Director of Human Resource Services) and Victor Demming (Business Administrator). Wildy rated Complainant as "superior" in all areas and noted, "Excellent candidate! appoint immediately." Demming rated her "strong" in all areas and also recommended hiring her. Morgan was out on medical leave at the time and learned upon his return that Complainant had been hired as a District employee.

Complainant was assigned to work at the Cicely Tyson Middle/High School from 3:00 p.m. to 11:00 p.m. Her immediate supervisor was Antoinette Proverbs (Head Custodian), who reported to Franklin Santos (Custodial Supervisor), who reported to Morgan (Principal on Special Assignment).<sup>2</sup>

Complainant told DCR that in September 2011, she began memorializing incidents she felt constituted harassment, such as Santos reprimanding her unnecessarily, forcing her to clean a bathroom that she was not responsible for, forcing her stay past her shift to finish a job, and falsely accusing her of cursing at him.

**c. The September 2011 Meeting Incident**

Complainant told DCR that on September 15, 2011, she heard an announcement over the loudspeaker directing her to immediately report to Morgan's office. When she arrived, Morgan, Santos, Dario Lambkin (head of the facilities department) and Aminah Toler (Morgan's secretary) were in the room. She claims that she asked why she was summoned and that Morgan replied, "You don't ask the questions, I do," and that he heard that she was spreading rumors about being sexually harassed by a male employee. She said that Morgan also accused her of cursing out her supervisor, failing to follow directions, violating the chain of command, and taking untimely lunch breaks. Complainant told DCR that she requested union representation but Morgan refused. Complainant said that she was crying by the end of the meeting.

Toler largely corroborated Complainant's version of events. She told DCR that Morgan twice denied Complainant's request for union representation and interrogated Complainant in a manner that turned hostile. She said that Morgan's tone and manner were demeaning and almost bully-like and that Complainant began to cry.

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<sup>1</sup> In a subsequent discussion with DCR, Morgan denied using the word "bitch."

<sup>2</sup> At this time, Morgan was no longer a school building principal but had administrative responsibilities over certain departments in the district, including those governing its custodians.

Toler said that after Complainant left the meeting, Morgan commented about Complainant's body to Santos and Lambkin, saying "With all that equipment she has, oh, man!" She stated that Morgan told her to leave the room and continued talking to the two men. Toler stated that even before Complainant arrived at the meeting, Morgan and Santos were engaged in sexually charged banter about Complainant that included sexual innuendo. Toler stated that Morgan took possession of her notes memorializing what occurred at the meeting and revised them. Toler did not recall everything he revised, but recalled that he changed the references to Complainant asking for union representation.

**d. Complainant Lodges Internal Complaints Against Morgan and Santos**

The next day, September 16, 2011, Complainant wrote a letter to HR Director Wildy describing the meeting. She wrote, among other things, that Morgan said he heard she was spreading rumors that a male employee was sexually harassing her, that Morgan had called her a "bitch" when she was a Sodexo employee, that he had her transferred to another school and that Morgan and Santos were continuously harassing her.

On September 21, 2011, Wildy met with Complainant and her union representative to discuss Complainant's harassment charges.

On September 28, 2011, Wildy gave Complainant's letter to Dr. Deborah Harvest (Assistant Superintendent for Operations/District Affirmative Action Officer). Later that day, Wildy informed Harvest that a few days after receiving Complainant's allegations, a secretary, S.T., complained about the manner and tone in which Morgan interacted with her. Wildy noted that the superintendent, Dr. Gloria Scott, was present for much of the conversation with S.T. Wildy asked Harvest to investigate the allegations made by both women.<sup>3</sup>

On October 13, 2011, Harvest met with Complainant, Morgan, Santos, Wildy, Proverbs, and Complainant's union representative, Kenneth Wiggins. Complainant told them that she had been subjected to additional harassment after the September 15 meeting. Morgan stated that they called Complainant to his office to ask her if she was being harassed by any staff members and to discuss her work performance, and that no union representation was needed because it was not a disciplinary hearing. Santos stated that he merely redirected Complainant in her tasks when needed, and provided verbal and written warnings due to Complainant's failure to complete assigned tasks. Toler shared her notes from the prior meeting, which stated that Morgan began the meeting by asking Complainant if she had been harassed by a male staff member, and when she said she had not, he asked whether she had problems with any other employee. Complainant replied that a female co-worker was not doing her work properly, and that led to a discussion of Complainant's work performance.

On October 18, 2011, Harvest issued the report of her investigation of Complainant's allegations against Morgan and Santos. The report did not provide details about the incidents, but stated that she told Complainant that a meeting would be arranged to address her concerns. Harvest wrote that Santos denied harassing Complainant and claimed that he was just

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<sup>3</sup> On April 15, 2013, Wildy wrote a memo to Superintendent Scott, enclosing a copy of Harvest's October 18, 2011 memo, and providing her own summary of Respondent's 2011 investigation. In that memo, Wildy wrote that the September 15, 2011 "meeting was called to investigate rumors of sexual harassment of [Complainant] by a male staff member . . . to insure that no harassment was taking place." Her memo also noted that the allegation that Morgan called Complainant a "bitch" occurred while Complainant was a Sodexo food service worker rather than a custodian.

performing his duties. Harvest concluded that Morgan and Santos did not subject Complainant to harassment, intimidation, or bullying, but she encouraged Complainant to document any future incidents she might perceive as harassment, and to report them to Harvest. The report delineated some remedial actions that would be taken to address some of the issues discussed at the meeting, including removing a disciplinary memo from Complainant's file, reassigning some of Complainant's duties to the day shift to free up her time for cleaning curriculum areas, and an acknowledgment that Complainant may not be able to complete all of her own assignments when assigned to assist with tasks assigned to other custodians.

**e. Complainant Files Additional Complaints**

Three weeks after Harvest issued the results of her internal investigation, Complainant filed complaints with the EEOC and the DCR based, in part, on her concern that HR had not properly addressed her allegations.

**f. Similar Complaints Against Morgan from Other Employees**

The DCR investigation found that at the time of Harvest's investigation, Respondent was on notice that other women had raised similar allegations against Morgan (i.e., sexual harassment and retaliation for rejecting his advances and/or for reporting the harassment).

Priscilla Burke, a 39-year District employee who served as grievance chairperson, told DCR that when Morgan was principal of East Orange High School, she received several complaints from female teachers reporting that he was verbally aggressive and was making unprofessional remarks to them. Burke stated that those complaints were documented. DCR made several requests for Morgan's personnel file, including a June 30, 2014 Notice in Lieu of Subpoena. Out of approximately 2000 pages in the file, after attorney review, DCR received only about 120 pages, with no satisfactory explanation as to why the remaining pages were not provided, even in redacted form if appropriate. In the 120 pages received, there was only one employee grievance to Burke about Morgan, despite her statement that she received several complaints. Respondent informed DCR that if any complaints about Morgan were submitted to Harvest, she might have filed them in a different location, rather than in Morgan's personnel file. Despite DCR's prior requests for all complaints against Morgan, Respondent has not provided any additional documents.

Morgan's former secretary, D.B., told DCR that Morgan used sexual innuendo, summoned her into his office to describe his sexual abilities, and attempted to rub against her. She told DCR that when she objected, he began retaliating against her. She stated that in or about 2005-06, she complained to Gloria Scott, who was Respondent's Affirmative Action Officer at that time, that Morgan was sexually harassing her and retaliating against her for objecting to his sexual advances. D.B. said that he wrote her up frequently, gave her poor performance evaluations, and threatened her with the loss of her job. D.B. told DCR that Scott asked how far she wanted to take her complaint, and she told Scott that she wanted a transfer to another school. D.B. was then transferred.

Toler noted that as a general matter, Morgan was verbally abusive in his workplace interactions with women, and regularly talked down to them and made demeaning comments. Toler filed a complaint with DCR alleging that beginning in August 2011, Morgan subjected her to unwelcome conduct of a sexual nature. In her DCR complaint and in an internal complaint filed with the District, Toler alleged that Morgan repeatedly made comments about her body, told her that she could be his "flavor," and called her into his office when he was watching films,

and would comment on scenes with sexual content. She alleged that despite repeatedly telling him that his behavior made her uncomfortable, he continued. Toler went out on family leave to care for her daughter from March 9 until March 28, 2012, and two days after her return, was involuntarily transferred to HR. Harvest investigated Toler's internal complaint of sexual harassment and retaliatory transfer, and a summary of her investigation was included in a June 12, 2012 memo from Scott to Respondent. The memo stated that Harvest could not conclude whether sexual harassment did or did not occur, but noted that a previous employee also attested that she had been subjected to some of the same conduct. Toler's complaint with DCR was settled before the investigation was completed.

As part of the investigation of Toler's complaint against Morgan, Harvest interviewed S.T. on April 17, 2012. S.T. told Harvest that Morgan screamed and yelled at her in front of a vendor, yelled at her numerous times on the phone, and used profanity when speaking with her. She told Harvest that she had complained to Wildy and Scott that Morgan was threatening her, and that she was bullied and verbally abused by him. She told Harvest that she never asked to be transferred, but asked to be respected and treated fairly, instead she was transferred out of the department. She told Harvest that she was not the only one to whom Morgan has been abusive, and that because no action was taken against him, the pattern continues.

Documents provided by Respondent show that in January 2007, Respondent agreed that a salary increment that had been withheld from Morgan would be restored in July 2007, "so long as . . . no further complaints by students, staff or parents are substantiated against him."

In 2008-09, D.H., a teacher's assistant, filed a grievance alleging that Morgan, who was the principal at the Patrick Healy School at the time, sexually harassed her and retaliated against her for objecting to his sexual comments and conduct. On October 1, 2009, D.H. filed a complaint with DCR alleging that Morgan made comments about her body, would touch her breasts, and once cornered her in a hallway and attempted to kiss her. She further alleged that after she objected to his advances, she received warnings, an unsatisfactory evaluation, and notice that she would not be re-hired for the next school year.<sup>5</sup>

DCR has identified other employees who complained to the District that Morgan was sexually harassing them. Those observations were not solely made by women. For instance, Head Custodian John Bailey told DCR that Morgan was demeaning to women. He said that he saw Morgan "tap a woman on the head as if . . . petting a puppy."

#### **g. Complainant Begins Working at a New School**

While Complainant was out on medical leave in mid-September 2013, Respondent transferred her to the Mildred Barry Garvin School ("Garvin"). On the day that she reported to work at her new assignment, November 20, 2013, she was written up for insubordination by the school's principal, Dr. Howard Walker. Walker wrote that he and the school's head custodian, Howard Baynard, discovered that some of Complainant's assigned areas were unclean, including a strong smell of urine in a bathroom. The memo stated that Walker asked her to meet with him, Santos, and Baynard, but that she refused to discuss anything without her union representative. Walker noted that he did not believe union representation was needed because their intent was to provide her with instructional support. The memo stated that Complainant left

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<sup>5</sup> On August 4, 2009, Respondent voted to defer action on D.H.'s employment for the 2009-10 school year. D.H.'s complaint is currently pending with DCR.

his office without permission, and returned several minutes later to announce that she would meet them the following day. The memo stated that she left the building without giving them time to respond, without authorization, and without letting them know if she would be returning.

Complainant told DCR that she did not leave the building but merely returned to her work area.

On November 21, 2013, Complainant, Walker, Union President Lynette Joyner, Walker, Santos, Baynard and a head custodian, John Bailey, met to discuss the unclean areas.

The next day, Walker issued a written reprimand to Complainant for her conduct at the November 21 meeting, asserting that Complainant told Santos, "this not going to work . . . I will not work at this school." Walker wrote that during the meeting, Complainant was rude and disrespectful, refused to address Baynard as "Mr. Baynard," and referred to Walker and Baynard as liars.

Bailey told DCR that Complainant's write-ups and a subsequent suspension were excessive. For instance, he told DCR that he explained to Walker that Complainant did not leave the building as alleged, and asked him to revise the memo accordingly, but Walker refused.<sup>4</sup> Moreover, he stated that Baynard admitted during the November 21 meeting that the urine smell was an ongoing problem that predated Complainant's arrival at the school.<sup>5</sup> Bailey stated that although some of Complainant's statements and conduct at the meetings might otherwise be inappropriate or insubordinate, they were justified here because they were provoked by the repeated unnecessary write-ups that had reached the level of harassment. Bailey told DCR that the initial cleanliness reports generated by head custodians do not usually generate discipline. Instead, the protocol is to speak with custodians first to make them aware that there is an issue, and give them a day to remedy the problem. He stated that where the custodian is new to the school—like Complainant—then there is even more reason to speak with the custodian and work things out before issuing disciplines.

On November 26, 2013, Santos issued a written reprimand to Complainant, asserting that several of her areas were unclean on November 25, 2013, and that when he and Baynard attempted to discuss the problem with her, she used vulgar language and was unwilling to take instructions. After receiving a copy of the reprimand, Walker issued his own reprimand to Complainant, enclosing six notes from teachers reporting that their classrooms were not cleaned, and two "cleanliness reports" from Baynard. His memo recommended a three-day suspension. On December 3, 2013, Superintendent Scott wrote a letter to Complainant suspending her without pay for three days effective December 13, 2013.

Complainant told DCR that after receiving copies of the six teachers' complaints she spoke to each of them and was told that Baynard instructed them to submit complaints to Walker. Complainant said that after hearing that she only began working at the school a few days earlier, the teachers told her they would not have submitted the complaints.

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<sup>4</sup> On January 16, 2014, Walker issued a revised memo, removing the claim that Complainant had left the building.

<sup>5</sup> Baynard told DCR that the November 20, 2013 reprimand about the dirty restroom was later removed from Complainant's file, because the problem was a result of a clogged toilet.

On December 2, 2013, Walker gave Complainant a poor evaluation that covered the period from July 1 through November 27, 2013, although her first day at the school was November 20, 2013. He rated her outstanding for punctuality, average for knowledge of work, below-average for neatness and following directions, N/A for accuracy, and unsatisfactory for the remaining ten categories. There is no indication on the evaluation that Walker consulted Champagne or Proverbs about her performance at Cicely Tyson Middle/High School for the period of July 1 - September 13, 2013. The evaluation also stated that Complainant did not report to work from September 16, 2013, through November 19, 2013, without acknowledging that she was on medical leave for that period. It appears that on that basis, he rated her attendance "unsatisfactory."

DCR reviewed Complainant's performance evaluations for the three previous evaluation periods, which were signed by Champagne. Complainant was rated either above-average or average in all fifteen categories in the March 30, 2012 and the March 30, 2013 evaluations, and was recommended for salary increase in those evaluations. In the November 30, 2012 evaluation, she received all average or above-average ratings, except for below-average ratings in two categories - judgment and accuracy - with a notation that these ratings were based on two incidents in August and September, and that she was "still considered a very cooperative employee who . . . makes every attempt to follow district and school policies."

As to management's allegations that she did not properly clean her assigned areas, Complainant told DCR that because she was being targeted and harassed, she took pictures of the area she cleaned for proof that she was doing her work. Complainant also contacted Respondent's Human Resources Specialist, Anita Patricia Tucker, because she feared that she was being targeted and harassed based on her prior complaints. Complainant submitted a signed statement from Tucker, dated December 17, 2013, in support of her claim that she was being unfairly scrutinized. The letter stated, in part:

In my opinion, [Complainant] was not being treated fairly and the only other person that was aware of it was her union representative. Unfortunately, given the nature of [Complainant]'s situation and the individuals involved, it was difficult for me to do anything for her without my help being a conflict of interest for me.

[Complainant] contacted me while she was absent due to personal illness to ask for my help with her situation. She explained to me that she was informed by her union representative that her superiors "wanted her gone" so when she returned to work, she needed to be very careful. I recommended that she follow-up with the grievance that was initiated before she went out ill.

When she returned to work, she was written up for deficiencies after working at the new location for just one day. . . She asked that I speak with Mr. Bailey to find out more of what she had told me. When I spoke to Mr. Bailey, he confirmed that he know [sic] that [Complainant] would be written up and was targeted. He further stated that he does not see or understand the reasons why she was. He also said that he is trying his hardest to resolve the issue for her but there are limits to how much he can do as her union representative.

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[Complainant] came to see me, I believe the third day after she returned to work, and again told me that she was written up. She showed me pictures of the areas that she had cleaned. From what I could see, the areas looked very clean. At

this point her situation seemed even more bizarre. Again, I informed her that she needs to have her union rep call an emergency meeting to try to resolve it and she said that he was.

I am not sure which day it was, but I believe it was after the fourth write up in 4 or 5 days of returning to work she was recommended for suspension. She begged me to help her; she was very tearful and very angry. At this point, I felt that I had no other recourse but to try to ask for help on her behalf. I called the superintendent's office so that the superintendent can initiate an intervention because at that time, it was difficult for me to ask her to return to work and wait for the grievance process to be followed with the current working conditions. I told her that I have done all I could for her and if no one in the district including her union representation can help her, she would have to seek help outside the district including waiting out the process until her grievance went to arbitration.

Walker told DCR that all of Complainant's write-ups except for her evaluations were purged from her file at the request of Superintendent's confidential secretary, Mary Fayton. He could not recall when Fayton made that request, but said he assumed it was because Complainant had filed complaints with DCR and the EEOC. Walker also said that the three-day suspension was lifted. DCR confirmed that Complainant was eventually reimbursed for the pay she lost due to the suspension.

### Analysis

The LAD prohibits gender-based discrimination. N.J.S.A. 10:5-12(a). The New Jersey Supreme Court has noted that gender discrimination in the workplace "is peculiarly repugnant in a society which prides itself on judging each individual by his or her merits." Peper v. Princeton, 77 N.J. 55, 80 (1978). A complainant may make a *prima facie* case of gender discrimination by showing that she was treated differently than similarly situated male employees. Id. at 84-85. Sexual harassment is also a form of gender discrimination. Lehmann v. Toys R Us, 132 N.J. 587 (1993). To state a claim for hostile work environment sexual harassment, a plaintiff must "allege conduct that occurred because of her sex and that a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or offensive working environment." Id. at 603. The "because of sex" requirement will be satisfied when the complained-of conduct is sexual or sexist in nature. Id. at 605. Where the conduct is not facially sex-based, a complainant can instead show that only women were subject to the complained-of harassment. Alternatively, a complainant may show that conduct that is not facially sex-based is accompanied by harassment that was obviously sex-based. Ibid.

The LAD also makes it illegal to retaliate against an employee because she "opposed any practice or acts forbidden under [the LAD] or because that person has filed a complaint, testified or assisted in any proceeding under [the LAD]." N.J.S.A. 10:5-12(d). To establish a *prima facie* case of retaliation under the LAD, a plaintiff must show that she engaged, reasonably and in good faith, in activity protected by the LAD; that the employer subjected her to an adverse employment action after learning of the protected activity; and that there was a causal connection between the two. Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 373 (2007).



At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. N.J.A.C. 13:4-10.2. Probable cause for purposes of this analysis means a "reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial "culling-out process" in which the DCR makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

In this case, Respondent denies that Complainant was subjected to any differential treatment or harassment based on her gender, or because she made any complaints of discrimination. Instead, Respondent contends that any actions taken against Complainant were due to legitimate concerns regarding her job performance. However, the evidence reviewed during the DCR investigation raises questions as to whether Respondent's treatment of Complainant was in fact motivated by bona fide concerns about her job performance.

Complainant alleged that Morgan called her a "bitch" in 2010 while she was working as a cafeteria aide, and forced her to be transferred to another school after she complained about him. Complainant alleges that once she became a school custodian and was again in Morgan's chain-of-command, she was differentially treated and disciplined. Part of that conduct included Morgan summoning her to a meeting on September 15, 2011, during which she says he was verbally abusive to her and caused her to cry. A witness at the meeting confirmed Complainant's report of Morgan's temperament during the meeting as well as Complainant's response. The witness also reported that Morgan and Complainant's direct supervisor (Santos) engaged in sexual banter about Complainant after she left the meeting. The witness's statement to DCR supported the notion that in 2011, Morgan and Santos were upset by the possibility that Complainant was telling people that she had been sexually harassed in the workplace, particularly where both supervisors may have been concerned that such accusations were against them.

Complainant filed an internal complaint with Respondent after the September 15 meeting, and alleges that Santos and others continued to subject her to unwarranted scrutiny and discipline. During DCR's investigation, Bailey and Tucker supported Complainant's allegation that almost immediately after she arrived at Garvin in 2013, Santos and others began unnecessarily criticizing her work and subjecting her to excessive and unwarranted disciplines. The timing of the discipline is also instructive, in that significant chastisement and discipline began immediately upon her starting work at Garvin. In the absence of any other viable explanation, it is not unreasonable to conclude that the excessive scrutiny and disciplines were intended as punishment for her past internal and external complaints against Santos and Morgan. Such an inference is also supported by what appears to be a pattern of conduct by Morgan in harassing and bullying staff members, and others, and seeking reprisals against those who complain about him. The fact that the disciplines issued to Complainant were later rescinded may be relevant to her claim for damages, but does not necessarily undercut her retaliation claim. Indeed, in this case, the fact that the disciplines were withdrawn may be viewed as support for the conclusion that they were initially unwarranted. In view of the above, the investigation supports a finding of probable cause that the treatment Complainant received was motivated by her gender and/or her complaints that she was being discriminated against. A

full hearing in necessary to determine Respondent's actual motivations in its treatment of Complainant.

The investigation raised other concerns. Respondent's response to Complainant's internal complaint about the September 15, 2011 meeting ignored the fact that Morgan summoned her to a meeting with two lower level male managers and his secretary to question her about the possibility that she was sexually harassed in the workplace. This was not an appropriate response to a report of sexual harassment, even if only a "rumor." There is no indication that Morgan told Complainant that she should report any sexual harassment to the District's Affirmative Action Officer, Harvest. Nor is there any indication that he reported the concern directly to Respondent's Affirmative Action Officer. Moreover, where the alleged perpetrators are angrily questioning a female subordinate about whether she is spreading rumors of being sexually harassed, the interrogation itself could be viewed as a vehicle for intimidation, rather than a valid investigatory inquiry. There is no indication that Morgan was ever reprimanded or counseled about questioning a possible sexual harassment victim in a non-confidential meeting that was also called to address performance issues.

Harvest told DCR that all employees receive training on sexual harassment annually, and that Morgan presents the training to the custodial staff. Given the history of complaints against Morgan, the notion that he is entrusted with providing sexual harassment training further suggests that Respondent was not taking sufficient steps to ensure that its policies and procedures were effective and understood by all employees.

In view of the concerns raised above, the Director finds at this threshold stage in the process that there is a sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.

DATE:

3-9-15



Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS